



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F05-04

CORPORATION OF THE DISTRICT OF MAPLE RIDGE

Celia Francis, Adjudicator
February 4, 2005

Quicklaw Cite: [2005] B.C.I.P.C.D. No. 5
Document URL: <http://www.oipc.bc.ca/orders/OrderF05-04.pdf>
Office URL: <http://www.oipc.bc.ca>
ISSN 1198-6182

Summary: Applicant requested records related to the District's request for offers regarding a property sale. The District initially withheld several records but, after the sale of the property, disclosed almost all of them. Section 14 applies to the remaining records in dispute.

Key Words: Solicitor client privilege.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 14.

Authorities Considered: B.C.: Order 02-01, [2002] B.C.I.P.C.D. No. 1.

1.0 INTRODUCTION

[1] The applicant in this case is a contractor who requested from the Corporation of the District of Maple Ridge ("District") records related to the District's "Request for Offers Property for Sale 2002" for a property in the District. The request included memos, e-mails, telephone calls, bids, notes and responses to the offer. The District denied access to information and records, citing ss. 12(3)(b), 13(1), 14, 17(1)(d) and (e), 21(1)(a)(ii), (b), (c)(i) as its authority. The applicant then requested a review of the denial.

[2] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. The Office sent the notice of inquiry to the applicant, the District and three third parties. The applicant, District and one third party made submissions. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

[3] After the close of the inquiry, the District informed this Office that the sale of the property had taken place. As a result, it disclosed the records to which it had earlier applied ss. 12(3)(b), 13(1) and 17(1)(d) and (e) and, with the exception of one severed record (an invoice, Exhibit “U”), ss. 21(1)(a)(ii), (b), (c)(i). Because the applicant said in its reply that it did not want the information severed from Exhibit “U”, I do not need to consider this allegedly s. 21 information and need only consider the District’s application of s. 14.

2.0 ISSUE

[4] The issue before me in this case is whether the District is authorized by s. 14 to refuse access to information.

[5] Under s. 57(1) of the Act, the District has the burden of proof regarding s.14.

3.0 DISCUSSION

[6] **3.1 The Context for the Review** – The District said that it decided to sell an 11.24 hectare property on Industrial Avenue within the District suitable for the development of compact housing. It engaged in a request for offers process in the fall of 2002 and received offers from three companies to purchase the property.

[7] It accepted the offer from the highest bidder and then negotiated with that bidder for the final sale and transfer of the property. The District said that, although an agreement of purchase and sale was executed in January 2003, the agreement was subject to a number of conditions. At the time of the inquiry, negotiations were not yet concluded, it said, and the sale had not taken place (paras. 6-12, Fryer affidavit).

[8] **3.2 Solicitor-Client Privilege** – The remaining records in dispute, which the District withheld in full, flow from the request for offers process and comprise correspondence and notes of telephone calls between the District and its solicitors. The District pointed out that the Information and Privacy Commissioner has confirmed that s. 14 of the Act incorporates the common law rules on solicitor-client privilege. It said that it had received legal advice from its solicitors on the sale of the property and that it was withholding its communications with its solicitors. The District said that the records it is withholding under s. 14 (Exhibits “M” and “O” and most of Exhibit “N”) are “clearly confidential communications between the District and its solicitors and relate to the giving or receiving of legal advice with respect to the sale of the Property” (paras. 15-16 and 30-31, initial submission; paras. 20-21, Fryer affidavit).

[9] The applicant acknowledged that s. 14 attaches to legal advice. It asked, however, that I “ensure that solicitor client privilege is indeed applicable to the documents which have been withheld under this head” (paras. 4(a)-(c), initial submission; p. 3, reply).

[10] Section 14 reads as follows:

Legal advice

14 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

[11] The Information and Privacy Commissioner has considered the application of s. 14 in numerous orders and the principles for its application are well established. See, for example, Order 02-01, [2002] B.C.I.P.C.D. No. 1. I will not repeat those principles but will apply them here.

[12] My review of the records to which the District applied s. 14 confirms that they are communications between the District and its solicitors concerning the sale of the property. In light of the District's affidavit evidence and the other material before me, I am satisfied that these communications are protected in their entirety by solicitor-client privilege and therefore that s. 14 applies to them.

4.0 CONCLUSION

[13] For the reasons given above, under s. 58 of the Act, I confirm the decision of the District that s. 14 of the Act authorizes it to refuse access to the information in dispute here.

February 4, 2005

ORIGINAL SIGNED BY

Celia Francis
Adjudicator